

**STATE OF MICHIGAN
IN THE SUPREME COURT**

**THE PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,**

**KAMERON LEO KILGO
Defendant-Appellant.**

No. 151076

**L.C. No. 14-009613-01-FH
COA No. 325582**

**ANSWER IN OPPOSITION TO APPLICATION FOR INTERLOCUTORY
LEAVE TO APPEAL
PRIOR TO DECISION OF THE COURT OF APPEALS**

**KYM L. WORTHY
Prosecuting Attorney
County of Wayne**

**TIMOTHY A. BAUGHMAN
Chief, Research, Training, and Appeals
1441 St.Antoine
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The People of the State of Michigan, by KYM L. WORTHY, Prosecuting Attorney for the County of Wayne, and TIMOTHY A. BAUGHMAN, Chief, Research, Training, and Appeals, in answer to the application for leave to appeal, say as follows:

1. Defendant wishes to raise a “mistake of age” defense to criminal sexual conduct in the third degree based on an underage complainant. This case has not yet gone to trial, nor has defendant pled guilty, nor has the Court of Appeals made a decision on defendant’s interlocutory application. Defendant requests this Court expend its scarce resources at this early stage so that he may raise the defense of “mistake of age” at trial, a defense that does not exist in the statute, and, to be allowed, must be found in some way to be mandated by the Constitution. This Court held otherwise in *People v Cash*, 419 Mich 320 (1984).

2. Defendant wishes this Court to revisit *Cash* because “the world has changed substantially since 1922 and 1984,”¹ because “with the physical maturation of today’s teens the ability of the state to protect and the need for the state to protect has greatly diminished,”² because some other states have *legislatively* established a reasonable-mistake-of-age defense,³ for reasons rejected by *Cash*, and for reasons that are not relevant.⁴ Essentially, defendant treats this Court as though it were a legislative committee, considering whether the statute should be amended.

3. A case cited by defendant summarizes the state of the law around the country:

Just four states—Alaska, California, New Mexico, and Utah—have ever recognized a mistake-of-age defense without specific statutory authorization. Of those four states, California and New Mexico remain the only states operating under a judicially created mistake-of-age defense. Alaska has codified its defense while Utah has statutorily disallowed such a defense. Utah's Supreme Court subsequently upheld as constitutional the statute disallowing a mistake-of-age defense. *Alaska is the only jurisdiction that has suggested that a mistake-of-age defense is constitutionally required, and the Supreme Court of Alaska later clarified that its due-process holding was based upon its state constitution.*⁵

¹ Application, at iv.

² Application, at 11.

³ Application, at ii.

⁴ See discussion of *Lawrence v Texas*, 539 US 558 (2003).

⁵ The case does not appear at the westlaw citation, 441 SW3d 253 (2014) because the mandate was recalled. But the mandate was recalled because a petition for certiorari had been filed, which has been denied. The mandate has now issued in the case. The opinion may be found at caselaw.findlaw.com/tx-court-of-criminal-appeals/1671768.html (emphasis supplied).

4. There is no basis under principles of stare decisis for this Court to revisit *Cash*. Defendant is in the wrong forum; he should be making his arguments to the legislature. Leave should be speedily denied, this being an interlocutory application, where a stay has been entered.

Relief

WHEREFORE, the People request this Honorable Court to speedily deny leave to appeal before decision of the Court of Appeals, and to direct that the case proceed in the trial court.

Respectfully submitted,

KYM L. WORTHY
Prosecuting Attorney
County of Wayne

/s/ Timothy A. Baughman

TIMOTHY A. BAUGHMAN
Chief of Research
Training and Appeals